

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

SCOTT HOLMS,

Case # 0081012754

Charging Party,

ORDER

-v-

ENVIROCON, Inc.,

Respondent.

Scott Holms (Holms) filed a complaint with the Department of Labor and Industry (Department) alleging that Envirocon, Inc. (Envirocon) discriminated against him in employment based on his disability or perceived disability when Envirocon did not rehire him subsequent to his brain surgery. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Holms' allegations of unlawful discrimination. The Department issued a Notice of Dismissal. Holms filed an objection and brief with the Montana Human Rights Commission (Commission) and requested oral argument. Envirocon responded by brief and Holms replied.

Upon notice of time and place to the parties, the Commission considered the matter on September 17, 2008. At the hearing, Holms did not appear. Envirocon appeared and was allowed to present its oral argument.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Section 49-2-511(2), MCA*. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is not an abuse of discretion.

If a charging party chooses to commence a civil action in district court, the charging party has 90 days after the date this order is issued to petition a district court,

in the district where the alleged violation occurred, for the appropriate relief. *Section 49-2-511(3)(a), MCA*. If a charging party fails to commence a civil action within 90 days, the claim is time barred. *Id.*

Alternatively, a party may ask a district court to review the decision of the Commission to affirm the dismissal of a complaint. *Section 49-2-511(3)(b), MCA; Mont. Code Ann. § 2-4-702*. This review must be requested within 30 days after the date this order is issued.

IT IS HEREBY ORDERED, that Scott Holms' objections are **overruled**. The Commission affirms the determination of the Human Rights Bureau to dismiss the complaint against Envirocon, Inc.

DATED this ____ day of September, 2008.

Chair Ryan C. Rusche
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this _____ day of September 2008.

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Montana Human Rights Bureau